

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Whitney Beber	Team: Squad #9	CCRB Case #: 201708515	<input checked="" type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Tuesday, 07/18/2017 3:55 PM	Location of Incident: § 87(2)(b)	Precinct: 43	18 Mo. SOL 1/18/2019	EO SOL 1/18/2019	
Date/Time CV Reported Sun, 10/08/2017 6:13 AM	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Mon, 10/16/2017 10:48 AM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Donald Hook	24812	920400	043 PCT
2. Officers			043 PCT
3. POM Kenneth Flynn	09381	959639	043 PCT
4. POM Rajasekar Prasad	16747	957970	043 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Tenzin Nyndak	15939	957909	043 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Donald Hook	Force: Police Officer Donald Hook pointed his gun at § 87(2)(b)	
B.POM Kenneth Flynn	Force: Police Officer Kenneth Flynn pointed his gun at § 87(2)(b)	
C.POM Donald Hook	Force: Police Officer Donald Hook used physical force against § 87(2)(b)	
D.POM Kenneth Flynn	Force: Police Officer Kenneth Flynn used physical force against § 87(2)(b)	
E. Officers	Force: Officers used physical force against § 87(2)(b)	
F. Officers	Force: Officers used physical force against § 87(2)(b)	
G.POM Rajasekar Prasad	Force: Police Officer Rajasekar Prasad restricted § 87(2)(b)'s breathing	
H. Officers	Force: Officers used physical force against § 87(2)(b)	
I. Officers	Force: Officers used physical force against § 87(2)(b)	

Case Summary

On July October 8, 2017, § 87(2)(b) filed the following complaint with the Internal Affairs Bureau under original log number 2017-38991. On October 16, 2017, the Civilian Complaint Review Board received the complaint. This case was originally assigned to former Investigator Isabelle James. On November 20, 2017, § 87(2)(g). On March 27, 2018, this case was re-opened and assigned to Investigator Beber.

On July 18, 2017, at approximately 3:55 p.m. § 87(2)(b) started breaking the exterior windows in the stairways of the apartment buildings located at § 87(2)(b) in the Bronx with a hammer. As he was walking down the stairs with the hammer in his hand, he encountered Police Officer Kenneth Flynn and Police Officer Donald Hook from the 43rd Precinct. Police Officer Flynn and Police Officer Hook drew their guns and pointed them at § 87(2)(b) (**Allegation A and B-Force**, § 87(2)(g)). Police Officer Hook told him to drop the weapon and told § 87(2)(b) to get on the ground. After refusing to get on the ground, Police Officer Flynn and Police Officer Hook kned him in the back of his knees which caused him to drop to his knees (**Allegations C and D-Force**, § 87(2)(g)). § 87(2)(b) was handcuffed and then “yanked” upright by his wrists. Approximately eight officers arrived and walked § 87(2)(b) down the stairs, pushing him as he walked (**Allegations E-Force**, § 87(2)(g)). As § 87(2)(b) was walking down the stairs he resisted by using the weight of his body to lean back. § 87(2)(b) alleged that he was carried down the stairs and then dropped from waist height outside of § 87(2)(b) onto the ground (**Allegation F-Force**, § 87(2)(g)). Police Officer Rajasekar Prasad of the 43rd Precinct, placed the shirt § 87(2)(b) was wearing over his head because officers claimed § 87(2)(b) was spitting. § 87(2)(b) felt as though he could not breathe because of the temperature and the shirt that was placed over his head (**Allegation G-Force**, § 87(2)(g)). While he laid on the ground with his shirt over his head, § 87(2)(b) felt four to five kicks to the back of his legs, knees, lower spine and back area (**Allegation H-Force**, § 87(2)(g)). Officers then allegedly shoved/threw § 87(2)(b) into the back of an ambulance (**Allegation I-Force**, § 87(2)(g)). § 87(2)(b) suffered a small cut to his right shoulder from which he was bleeding because of having been dropped on the ground by officers and having landed on some glass. § 87(2)(b) was taken to § 87(2)(b). § 87(2)(b) was arrested and charged with § 87(2)(b).

There was no video footage of this incident.

Findings and Recommendations

Allegation (A) Force: Police Officer Donald Hook pointed his gun at § 87(2)(b)

Allegation (B) Force: Police Officer Kenneth Flynn pointed his gun at § 87(2)(b)

On July 18, 2018, at approximately 3:55 p.m. § 87(2)(b) started breaking the exterior windows in the stairways of the apartment buildings located at § 87(2)(b) with an approximately foot long hammer (Board Review 01). While the hammer was still in his hand, hanging by his side, he encountered Police Officer Hook and Police Officer Flynn who pointed a gun at him. Police officer Hook told § 87(2)(b) to drop the weapon. § 87(2)(b) immediately

dropped the weapon and put his hands up. § 87(2)(b) never raised the hammer above his knee and did not make any sudden movements.

As per Police Officer Flynn, at approximately 3:18 p.m. Police Officer Flynn and Police Officer Hook received a radio run that § 87(2)(b) was breaking windows with a hammer on Thieriot Avenue (Board Review 02). Police Officer Flynn and Police Officer Hook went to Thieriot Avenue and realized the incident was taking place in the building next door to the building that was cited in the radio run. Police Officer Flynn heard crashing sounds, so he walked to the side of the building where he saw someone breaking windows with something. He also observed that below the third floor, all the windows were broken. Police Officer Flynn and Police Officer Hook then entered the building and encountered § 87(2)(b) on the third floor as § 87(2)(b) was coming down the stairs with a hammer in his hand. There was blood on the hammer and § 87(2)(b)'s arm. § 87(2)(b) walked towards Police Officer Flynn and Police Officer Hook. Both officers drew their firearms and pointed them at § 87(2)(b). Police Officer Flynn pointed his firearm at § 87(2)(b) because he was approaching them with a bloody, dangerous instrument. After Police Officer Hook told § 87(2)(b) to drop the hammer two or three times, § 87(2)(b) complied. Police Officer Flynn then holstered his firearm.

As per Police Officer Hook, upon arriving on scene, he and police Officer Flynn saw shards of glass coming from the fifth or sixth floor of the building (Board Review 03). There were also shards of glass on the sides and in front of the building and he believed he heard someone breaking glass. Police Officer Hook and Police Officer Flynn encountered § 87(2)(b) as he was descending the stairs. Police Officer Hook described § 87(2)(b). At the time they encountered him he was sweaty and had several lacerations on his forearms. § 87(2)(b) was holding the hammer in his right hand down by his side. Police Officer Hook and Police Officer Flynn drew and pointed their firearms at § 87(2)(b). Police Officer Hook did so because he feared for his safety, as § 87(2)(b) was carrying a hammer, covered in sweat and blood, and was a very large individual. Both officers told § 87(2)(b) to drop the hammer, however § 87(2)(b) refused to comply and continued to walk down the stairs towards them. After telling § 87(2)(b) to drop the hammer approximately six times, § 87(2)(b) released the hammer and continued to walk down the stairs towards the officers. After § 87(2)(b) dropped the hammer, the officers holstered their firearms.

Police Officer Prasad did not observe any officer with their firearm out (Board Review 06). Police Officer Nyndak did not see any officer draw their weapon and point it at § 87(2)(b) (Board Review 05).

Patrol Guide Procedure Section 221-01 states that the decision to draw a firearm should be based on an articulable belief that the potential for serious physical injury is present (Board Review 04). It also states that when a uniformed member of service determines that the potential for serious physical injury is no longer present, they are to holster their firearm as soon as practicable.

§ 87(2)(g)
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§ 87(2)(g)

§ 87(2)(g)

Allegation (C) Force: Police Officer Donald Hook used physical force against § 87(2)(b)

Allegation (D) Force: Police Officer Kenneth Flynn used physical force against § 87(2)(b)

Allegation (E) Force: Officers used physical force against § 87(2)(b)

As per § 87(2)(b) when Police Officer Hook and Police Officer Flynn ordered him to get on the ground, § 87(2)(b) stated that he had knee surgery and that it would be difficult for him to do so. § 87(2)(b) gave the officers his hands and placed them behind his back. The officers tried to force him onto the floor by kneeling him in the back of his knees which caused his legs to buckle and for him to drop to the ground. § 87(2)(b) ended up on his stomach with his hands behind his back. § 87(2)(b) was handcuffed and yanked up by his wrists. Approximately eight officers arrived and walked § 87(2)(b) down the stairs, pushing him along the way. All the officers were behind § 87(2)(b) and he could not describe the officers who were behind him. As § 87(2)(b) was walking down the stairs he tried to prevent them from walking him by using the weight of his body to lean back.

As per Police Officer Flynn, when either he or Police Officer Hook told § 87(2)(b) to put his hands behind his back, § 87(2)(b) did not comply. Police Officer Flynn and Police Officer Hook tried to pull § 87(2)(b)'s arms behind him to place § 87(2)(b) into handcuffs but they were unable to do so. § 87(2)(b) "locked up" and "tensed" his arms by holding them unbent at this sides. Police Officer Flynn and Police Officer Hook brought § 87(2)(b) down to the ground and Police Officer Hook got one handcuff on § 87(2)(b). Police Officer Flynn did not remember how they brought § 87(2)(b) to the ground, but stated that they did so to restrain him because he was much larger than them. Police Officer Flynn did not remember if he or Police Officer Hook knelt § 87(2)(b) in the back of his knees to get him onto the ground. § 87(2)(b) landed on his chest and stomach. Police Officer Flynn and Police Officer Hook also went to the ground as they held on to § 87(2)(b) as they brought him down. § 87(2)(b) was handcuffed using two sets of handcuffs. Additional officers arrived soon after § 87(2)(b) was handcuffed. The officers stood § 87(2)(b) up and brought him downstairs. Police Officer Flynn followed behind § 87(2)(b) and the officers. Police Officer Flynn did not see anyone push § 87(2)(b) down the stairs and he did not do so himself.

Police Officer Hooks' statement is largely consistent with that of Police Officer Flynn. While § 87(2)(b) was being brought down the stairs, § 87(2)(b) used his body weight to prevent the officers from walking him down the stairs. Police Officer Hook denied that he or any other officer pushed § 87(2)(b) down the stairs at any point. Police Officer Hook stated that the officers guided § 87(2)(b) down the stairs.

As per Police Officer Tenzin Nyndak (then of the 43rd Precinct), he arrived after § 87(2)(b) was already on the ground. Police Officer Prasad did not observe any officer knee § 87(2)(b).

in the back of the knees and he did not do so himself. Police Officer Praasad did not remember § 87(2)(b) having been on the ground while they were upstairs. Neither Police Officer Nyndak nor Police Officer Prasad remembered observing any officers push § 87(2)(b) down the stairs and he did not do so himself.

Patrol Guide Section 221-01 states that members of the service may use force when it is reasonable to ensure the safety of a member of the service or third person, otherwise protect life, or when it is reasonable to place a person in custody or to prevent escape from custody. It also states that members of service will use only the reasonable force necessary to gain control of a subject. In determining whether the use of force is reasonable, members of service should consider the actions taken by the subject and whether the subject is actively resisting custody.

§ 87(2)(g)

§ 87(2)(g)

Allegation (F) Force: Officers used physical force against § 87(2)(b)
Allegation (G) Force: Police Officer Rajasekar Prasad restricted § 87(2)(b) s breathing.
Allegation (H) Force: Officers used physical force against § 87(2)(b)
Allegation (I) Force: Officers used physical force against § 87(2)(b)

§ 87(2)(b) stated that he was lifted and carried down the stairs after he resisted by leaning the weight of his body back. He was dropped from waist height outside of § 87(2)(b) onto the ground, causing a slight cut on his right shoulder. Police Officer Prasad then placed the t-shirt that § 87(2)(b) was wearing over his head. § 87(2)(b) stated that the officers claimed that he was spitting, but he denied having done so. § 87(2)(b) stated that he felt as though he could not breathe because of the temperature and the t-shirt over his head. Almost immediately after the t-shirt was placed over his head, § 87(2)(b) felt four to five kicks to the back of his legs, knees,

lower spine and back area while he was laying handcuffed on the ground. While he was on the ground an ambulance arrived. The t-shirt was removed from § 87(2)(b)'s head and officers shoved/threw § 87(2)(b) into the back of the ambulance. At that point § 87(2)(b) was not able to observe any officer's face.

Police Officer Flynn denied dropping § 87(2)(b) on the ground, denied seeing any other officer drop him on the ground, and did not see how § 87(2)(b) came to be on the ground. Police Officer Flynn denied kicking § 87(2)(b) and denied having seen any other officer do so. Police Officer Flynn saw an officer place a t-shirt over § 87(2)(b)'s head while he was outside, although he did not know which officer did so. He did not see § 87(2)(b) spit in Police Officer Nyndak's face, but stated that he later found out that the t-shirt was placed over § 87(2)(b)'s head because he spat in Police Officer Nyndak's face. Police Officer Flynn heard § 87(2)(b) yell that he could not breathe because of the shirt when he was outside.

As per Police Officer Hook, after § 87(2)(b) was placed into handcuffs Police Officer Nyndak and Police Officer Prasad arrived and assisted in standing § 87(2)(b) up. Immediately after standing § 87(2)(b) up, he spat in Police Officer Nyndak's face. At some point, an officer placed a shirt over § 87(2)(b)'s face but he did not know if this was done before or after § 87(2)(b) was brought down stairs. Police Officer Hook denied that § 87(2)(b) was ever lifted off the ground and carried at any point while they brought him down the stairs. Police Officer Hook did not hear § 87(2)(b) complain of having had difficulty breathing at any point. When they reached the bottom of the stairs, § 87(2)(b) dropped his body down to the ground. Police Officer Hook did not kick § 87(2)(b) and he did not see any other officer do so. Police Officer Hook did not see how § 87(2)(b) was placed into an ambulance.

As per Police Officer Nyndak, § 87(2)(b) was stood up and held toward the wall. § 87(2)(b) turned around while Police Officer Nyndak was holding him and spat in his face. Police Officer Nyndak did not do anything in response besides wipe his face. Once downstairs, § 87(2)(b) was brought to the front of the building and placed face down on the ground. Police Officer Nyndak did not see officers drop § 87(2)(b) on the ground and he did not do so himself. At some point a t-shirt was placed over § 87(2)(b)'s head but he did not know which officer did this. Police Officer Nyndak did not remember if § 87(2)(b) ever complained of an inability to breathe because of the t-shirt. Police Officer Nyndak did not observe officers throw § 87(2)(b) into the ambulance and he denied doing so himself.

As per Police Officer Prasad, at some point while dealing with § 87(2)(b) Police Officer Nyndak told him that § 87(2)(b) spat in his face. Police Officer Prasad vaguely remembered having seen § 87(2)(b) trying to spit but he did not remember him having spat in anyone else's face. Police Officer Prasad then lifted the bottom of § 87(2)(b)'s shirt over his face to prevent § 87(2)(b) from spitting in anyone else's face. Police Officer Prasad did not hear § 87(2)(b) complain that he was having trouble breathing. § 87(2)(b) was talking the whole time the t-shirt was over his face. Police Officer Prasad has had prior experiences with civilians spitting on him and other officers and stated that if they are nearby, covering the civilian's face with their shirt is the best way to prevent further spitting. Police Officer Prasad did not have any equipment specifically designated to cover someone's face or mouth. Police Officer Prasad denied dropping § 87(2)(b) and did not see any other officer do so. Police Officer Prasad did not kick § 87(2)(b).

§ 87(2)(b) while he was on the ground, and did not see any other officer do so. Police Officer Prasad did not remember seeing any officers throw or shove § 87(2)(b) into the ambulance and he did not think he did so.

§ 87(2)(g)

[REDACTED]

The FDNY Pre- Hospital Care report noted that upon arrival to the scene § 87(2)(b) was on the floor outside of his apartment wrestling/fighting with the NYPD. He was handcuffed, not cooperating and spitting (Privileged Documents). The report also notes that § 87(2)(b)'s breathing was normal.

TRI § 87(2)(b) completed by Police Officer Nyndak notes that he was exposed to bodily fluids by § 87(2)(b) (Board Review 06).

Police Officer Nyndak's memo book notes that he went to § 87(2)(b) to see a doctor because he was exposed to bodily fluids and that he completed Line of duty paper work (Board Review 07).

Patrol Guide Section 221-01 states that members of the service may use force when it is reasonable to ensure the safety of a member of the service or third party.

It is undisputed that Police Officer Prasad placed a t-shirt over § 87(2)(b)'s head after he was placed in handcuffs. § 87(2)(g)

[REDACTED]

Civilian and Officer CCRB Histories

- This is the first CCRB complaint to which § 87(2)(b) has been a party (Board Review 08).
- Police Officer Hook has been a member of service for 20 years and has been a subject of 22 CCRB complaints and 54 allegations, five of which were substantiated:
 - Case number 200506095 involved a substantiated allegation of a stop against Police Officer Hook. The Board recommended command discipline and the NYPD imposed instructions.
 - Case number 201500486 involved a substantiated allegation that Police Officer Hook refused to provide his name and shield number. The Board recommended command discipline and the NYPD imposed command level instructions.
 - Case number 201501548 involved substantiated allegations that Police Officer Hook entered or search premises, refused to provide his name and shield number and used a discourteous word. The board recommended charges and the NYPD imposed no penalty.
- Police Officer Flynn has been a member of service for two years and this is the first CCRB complaint to which he has been a subject.
- Police Officer Prasad has been a member of service for three years and this is the first CCRB complaint to which he has been a subject.

Mediation, Civil and Criminal Histories

- This case was not suitable for mediation.
- § 87(2)(b), § 87(2)(c)

Squad: **9**

Investigator: _____
Signature Print Date

Squad Leader: _____
Title/Signature Print Date

Reviewer: _____
Title/Signature Print Date

